

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:NER:MAN:TL-N-4756-00

VATaverna

date:

to: Chief, Examination Division, Manhattan District
Attn: Revenue Agent Robert Fieldsteel

from: District Counsel, Manhattan

subject:

Form SS-10 - Tax Year [REDACTED]

Form SS-10 - Tax Year [REDACTED]

Form SS-10 - Tax Year [REDACTED]

Consent to Extend the Statute of Limitations on Assessment

STATUTE OF LIMITATIONS EXPIRES [REDACTED]

UIL Nos. 6501.08-00, 6501.08-09, 6501.08-17

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We write in response to your request for advice in the above-captioned matters. Specifically you have requested that we provide you with the appropriate language to use on Forms SS-10 (Consents to Extend the Time to Assess Employment Taxes) to extend the statute of limitations on assessment of the employment taxes of 1. [REDACTED]; 2. [REDACTED]; and 3. [REDACTED]

█████ for the taxable year █████. The statute of limitations on assessment currently expires on █████.

Issues

1. Which entity is the proper entity to enter into a consent to extend the statute of limitations on assessment of the taxpayer's employment tax liabilities (Form SS-10) for pre-merger tax years?

2. What specific language should be used on the Forms SS-10?

Facts

█████ ("█████") (EIN █████) is a Delaware corporation. █████ timely filed Forms 940/941 with respect to its █████ employment tax liabilities. You are presently conducting an examination of █████'s employment tax liabilities for taxable year █████.

█████ ("█████") is a Delaware corporation. █████ is wholly-owned by █████ ("█████"), a Delaware corporation. On █████, █████, and █████ entered into an Agreement and Plan of Merger ("Agreement").

As a result of the Agreement, █████ became the wholly-owned subsidiary of █████. In addition, █████, which was created solely for the purpose of acquiring █████, was merged out of existence.

On █████, █████ filed a Certificate of Ownership and Merger with the Office of the Secretary of State for the State of Delaware, merging █████ and █████ into █████ under the name "█████."

█████ ("█████") and █████ ("█████") were Delaware corporations during the █████ taxable year. As of the date of this memorandum, we have not been advised that █████ or █████ were parties to any mergers or corporate name changes since █████.

Discussion

1. Which entity is the proper entity to enter into a consent to extend the statute of limitations on assessment of the taxpayer's employment tax liabilities (Form SS-10) for pre-merger tax years?

In general, the statute of limitations on assessment expires three years from the date the tax return for such tax is filed. I.R.C. § 6501(a). Section 6501(c)(4), however, provided an exception to the general three year statute of limitations on assessment. In accordance with this exception, the Secretary and the taxpayer may consent in writing to an agreement to extend the statute of limitations on assessment. For employment taxes, the form used by the Service to extend the limitations period on assessment is Form SS-10 (Consent to Extend the Time to Assess Employment Taxes).

Unlike the income tax liability of a consolidated group, where, as a general rule, the common parent acts as sole agent for each member of the group, each member of a consolidated group must act on its own behalf with respect its own employment tax liabilities. See I.R.C. § 1501 and the regulations thereunder. Each member is, therefore, responsible for entering into its own consent to extend the statute of limitations with respect to its employment tax liabilities. In the case of merged corporations the surviving or resulting corporation in a merger under state law may validly sign an extension agreement on behalf of the transferor (predecessor) corporation for a period before the transfer. Rev. Rul. 59-399, 1959-2 C.B. 499; See also Popular Library Inc. v. Commissioner, 39 T.C. 1092 (1963); Union Bleachery v. Commissioner, 97 F.2d 226 (4th Cir. 1938).

Here, the Agreement provides that [REDACTED] survived the merger between [REDACTED] and [REDACTED]. Therefore, [REDACTED], (now [REDACTED]) is the proper party to execute the Form SS-10 relating to [REDACTED]'s [REDACTED] employment tax liabilities.

Since [REDACTED] and [REDACTED] have not been subject to mergers or corporate name changes, they are the proper parties to execute the Forms SS-10 relating to their respective [REDACTED] employment tax liabilities.

The Forms SS-10 should be executed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act on behalf of [REDACTED], [REDACTED] and [REDACTED], respectively. See Rev. Rul. 83-41, 1983-1 C.B. 399, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305.

2. What specific language should be used on the Forms SS-10?

The caption of the Form SS-10 extending the statute of limitations for [REDACTED]'s employment tax liability for the

██████ taxable year should read as follows:

"████████████████████ (EIN ██████████) (formerly
████████████████████)"

The EIN of ██████████ (EIN ██████████) should be entered in the upper right hand corner of the Form SS-10.

The Forms SS-10 for ██████████ and ██████████ do not require special language.

Please note that Section 3461 of the Restructuring and Reform Act of 1998, codified in Section 6501(c)(4)(B), requires IRS to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Pub. 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the Form 872. Alternatively, you may advise the taxpayer orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case file.

Should you have any questions regarding this matter, please contact Viviana Taverna of this office at (212) 264-1595, ext. 211.

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District Counsel

By: _____
PETER J. LABELLE
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